

REMARKS

This is in response to the Office Action of April 1, 2009, for the application referenced above, wherein restriction has been required. Pursuant to 35 U.S.C. § 121, Applicants provisionally elect, with traverse, Claims 1, 5-9, 22, 26-30, 43, 45, and 59-73 of Group I for examination.

Pursuant to 37 C.F.R. 1.143, Applicant respectfully requests a withdrawal of the restriction requirement. Further examination of Claims 47, 49-53, and 55-58 in Group II would not pose a serious burden on the examiner if restriction is not required. The Manual of Patent Examining Procedure, section 803, states: “**There are two criteria for a proper requirement for restriction** between patentably distinct inventions: (A) The inventions must be independent or distinct as claimed; **and (B) There would be a serious burden on the examiner if restriction is not required.** (citations omitted, emphasis added). Further examination of the claims in Groups I and II would not pose a serious burden on the examiner under these circumstances, as described below.

CLAIMS 1, 43, AND 47 ALREADY EXAMINED BY EXAMINER

The subject application was filed on October 29, 2003 and has since been heavily examined by Examiner Van Nguyen for over two years. Specifically, the claims from **both Groups I and II have already been examined at least FIVE times already.** It is not clear that any significant additional work remains to be performed prior to allowance. Even if some work remains, whatever work remains before allowance of the claims should be insignificant in light of the examination already performed.

Examination 1: The first Office Action, mailed on March 23, 2007 by Examiner Nguyen, included rejections under either 35 U.S.C. § 102 or 35 U.S.C. § 103 for all claims then pending, including Claims 1, 43, and 47.

Examination 2: A Final Office Action was mailed by Examiner Nguyen on November 27, 2007, including similar rejections.

Examination 3: An advisory action was mailed by Examiner Nguyen on March 5, 2008 regarding Claims 1, 43, and 47. Applicant appealed Examiner Nguyen's decision on April 4, 2008.

Examination 4: The Pre-Appeal Brief Panel mailed a decision to re-open prosecution on April 18, 2008.

Examination 5: Examiner Nguyen mailed an office action on June 27, 2008, also rejecting Claims 1, 43, and 47.

Now, after over two years and five rounds of substantive examination of both claim groups, the Examiner is making a restriction that would require Applicant to cancel Claim 47 and all claims depending from Claim 47 because the **6th examination** of these claims would cause a “serious burden”.

A substantial amount of prior art references have already been cited and discussed by both Applicant and Examiner with respect to each of Claims 1, 43, and 47. Applicant would be materially prejudiced if Applicant is required to elect Claims 1 and 43 and cancel Claim 47 at this point in prosecution.

Further, restricting Applicant's claims after two years of substantive examination would cause an undue delay in the examination of Applicant's claims. Such a delay may cause harm to the public by creating uncertainty, due to the arguments already made with respect to the claims in Group II, in the scope of Applicant's claims. Finally, requiring Applicant to file a separate application for Claim 47 (and those claims depending from Claim 47) would contribute to the backlog patent applications to be examined by requiring duplicative efforts; Claim 47 and those claims depending from Claim 47 have already been examined on a substantive level by Examiner Nguyen for over two years. Applicant respectfully submits that further examination of Claim 47 would not pose a serious burden on the examiner. On the other hand, a restriction requirement would pose a serious burden on the Applicant.

Claim 47, which is the only Independent Claim of Group II, includes much of the same subject matter as Claims 1 and 43, which are the Independent Claims in Group I. For example, Claim 47 and Claim 43 both recite "A computer-implemented method" that includes "receiving an initial indication that an event was generated" at a node. Both claims feature a "message," that is transmitted or destined to be propagated from one node to another node. In both claims, the message is appended with information describing the event.

Over the past two years, Applicant has responded to several rejections that allegedly cover claims from both Group I and Group II. In fact, the subject matter in Claims 1, 43, and 47 is so interconnected that, in the most recent office action on the merits, the examiner alleged that a single reference (Larsson) anticipated each of the claims. Even though the claim groups have been characterized as belonging to separate classes, a continued examination of the claims

together would not pose a significant burden on the examiner due to the substantial amount of shared subject matter and prosecution history among the claims.

Pursuant to 37 C.F.R. 1.143, Applicant respectfully requests a withdrawal of the restriction requirement.

Respectfully submitted,

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